



State of Tennessee
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Administrative Procedures Division
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August 30, 2022

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General Civil - Legal Division
500 James Robertson Parkway, 5th Floor
Nashville, TN 37243

Roger Flambo
236 Ellington Place
Madison, TN 37115

**RE: TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. ROGER
FLAMBO, APD Case No. 12.06-221405J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

**BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE,
*Petitioner,***

v.

**ROGER FLAMBO,
*Respondent.***

APD Case No. 12.06-221405J

INITIAL ORDER

This contested case was heard *de novo* via videoconference at the request of Petitioner on July 8, 2022, before Administrative Judge Richard M. Murrell, assigned by the Tennessee Secretary of State, Administrative Procedures Division, to sit on behalf of the Commissioner of the Tennessee Department of Commerce and Insurance. The hearing addressed the allegations contained in the Notice of Hearing and Charges filed on April 7, 2022, pertaining to Respondent, Roger James Flambo. Alex Corder, Esq., represented Petitioner, the Department of Commerce and Insurance, Tennessee Securities Division (“the Division”). Respondent was not present nor was an attorney present on behalf of the Respondent.

The Record was closed on August 25, 2022, upon the filing of the Proposed Findings of Fact and Conclusions of Law by the Division.

NOTICE OF DEFAULT

Petitioner moved for default based on failure of Respondent, or a representative on his behalf, to appear at the scheduled hearing after receiving proper notice thereof. In support of the motion, Respondent was successfully served with the Notice of Hearing and Charges on April 1, 2022, pursuant to Tennessee Code Annotated § 48-1-125(f) but did not file a response.

Per the Order Setting Pre-Hearing Conference issued on April 25, 2022, a Pre-Hearing Conference was conducted on May 6, 2022. Respondent did not participate in the Pre-Hearing Conference. Respondent was properly provided with the Order Setting Hearing.

The Record indicates that service was legally sufficient in accordance with Tenn. Code Ann. §§ 4-5-307 and 62-4-130; and Tenn. Comp. R. & Regs. 1360-04-01-.06 and 1360-04-01-.15(c). Respondents have failed to participate in every step of the proceedings. The Department's Motion for Default was **GRANTED**. Respondents were held in **DEFAULT** pursuant to Tenn. Code Ann. § 4-5-309, and the Department was permitted to proceed on an uncontested basis.

After consideration of the Record, evidence submitted, testimony, and arguments in this matter, the Initial Order is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF THE EVIDENCE

Monica Meeks, Financial Services Investigator with the Department, testified on behalf of Petitioner. No witnesses testified on behalf of Respondents.

Nine exhibits were entered into evidence during the hearing. The following exhibits were marked into the Record:

1. Email correspondence from USPS customer support
2. Notice of Hearing and Charges with return receipt to Elm Hill Pike address
3. Notice of Hearing and Charges with return receipt to Ellington Place address
4. Affidavit of Shelby Lynch
5. Marked as 5(a) Notice of Hearing and Charges with return receipt to Assistant Commissioner Bowling
6. Marked as 5(b) correspondence from Assistant Commissioner Bowling to the Respondent

7. Marked as 5(c) USPS delivery notice regarding correspondence from Assistant Commissioner Bowling indicating delivery on April 1, 2022
8. Marked as 6, email correspondence with Webex invitation instructions
9. Marked as 7 a copy of the contract between the complaining investor and the Respondent
10. Marked as 8 a document received by the complaining investor from the Respondent purporting to be a statement of account
11. Marked as 9 a series of screen shots reflecting text communications between the complaining investor and the Respondent.

FINDINGS OF FACT

1. The Division opened an investigation into Roger Flambo upon a complaint from Jerel Smith. (Tr. p. 21).
2. Respondent executed a contract styled “Private Agreement” dated June 4, 2019, with Jerel Smith. (Exhibit 7; Tr. p. 22).
3. The Private Agreement’s terms provided that the Respondent would provide investment consulting services in Forex¹ trading. (Tr. p. 23).
4. The Private Agreement’s terms provided compensation to the Respondent as a one-time five-hundred-dollar (\$500) fee and a profit split of 50/50 between the Respondent and Mr. Smith. (Tr. p. 23).
5. The Private Agreement’s terms indicated that Mr. Smith would invest ten thousand dollars (\$10,000) with the Respondent for a term of six (6) months. (Tr. p. 23-24).

¹ This term is understood to refer to Foreign Exchange trading.

6. After sending the Respondent ten thousand dollars (\$10,000), Mr. Smith never received any profits from the Respondent, nor did he receive a return of his initial investment from the Respondent (Tr. p. 24-25).
7. Mr. Smith received a document alleging to show the performance of his investment over consecutive months in 2019. (Exhibit 8; Tr. p. 25).
8. The reports indicated that Mr. Smith's investment received a sizeable return over the majority of 2019. (Exhibit 8; Tr. p. 25-28).
9. The document is and does not reflect the performance of actual investments. (Tr. p. 28).
10. Respondent, through a series of text messages, communicated with Mr. Smith about investing with the Respondent and later about the performance of the investment. (Exhibit 9; Tr. p. 29-35).
11. Respondent and Mr. Smith discussed Mr. Smith taking his money and profits out and receiving payment for his investments. (Exhibit 9; Tr. p. 33-35)
12. Respondent repeatedly stated that Mr. Smith's money was being sent to him. (Exhibit 9; Tr. p. 34-35).
13. Mr. Smith never received any kind of payment or return of funds from the Respondent. (Tr. p. 36).
14. The Respondent was not registered as a broker-dealer, investment adviser, investment adviser representative, or agent in the State of Tennessee during the relevant time period. (Tr. p. 36).
15. The investment contract, a security under Tennessee law, was also not registered with the State of Tennessee. (Tr. p. 37).

APPLICABLE LAW

1. The Tennessee Securities Act of 1980 (“Act”), Tenn. Code Ann. § 48-1-101, *et. seq.*, places the responsibility for the administration of the Act on the Commissioner of the Department. The Division is the lawful agent through which the Commissioner administers the Act pursuant to Tenn. Code Ann. § 48-1-115, and it is authorized to bring this action based on the finding that such action is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act, pursuant to Tenn. Code Ann. §§ 48-1-112 and 48-1-116.

2. Tenn. Code Ann. § 48-1-102 provides the following applicable definitions:
 - (3) “Agent” means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in, or into this state. A partner, officer, director, or manager of a broker-dealer, or a person occupying similar status or performing similar functions, is an agent only if such person otherwise comes within this definition or receives compensation specifically related to purchases or sales of securities from, in, or into this state. “Agent” does not include such other persons not within the intent of this subdivision (3) as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors;

 - (4) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person’s own account and as part of a regular business than in connection with such person’s investment activities. ...

 - (12) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, buying, or selling securities, or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. ...

(13)(A) “Investment adviser representative” means any partner, officer, or director of (or person occupying a similar status or performing similar functions) an investment adviser, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser and does any of the following:

(i) Makes any recommendation or otherwise renders advice regarding securities:

(ii) Manages accounts or portfolios of clients:

(iii) Determines which recommendation or advice regarding securities should be given;

(iv) Solicits, offers, or negotiates for sale of or sells investment advisor services; or

(v) Supervises employees who perform any such actions[.]

(20)(A) “Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement investment or any fractional or pooled interest in a life insurance policy or life settlement investment, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing[.]

3. Tenn. Code Ann. § 48-1-109 states:

(a) It is unlawful for any person to transact business from, in, or into this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part[.]

(c) It is unlawful for any person to transact business from, in, or into this state as an investment adviser or investment adviser representative unless:

(1) The person is registered as an investment adviser or investment adviser representative under this part[.]

...

(e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order

adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

4. Tenn. Code Ann. § 48-1-104 provides:

(a) It is unlawful for any person to sell any security in this state unless:

- (1) It is registered under this part;
- (2) The security or transaction is exempted under § 48-1-103; or
- (3) The security is a covered security.

(b) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

5. Tenn. Code Ann. § 48-1-121 prescribes:

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:

- (1) Employ any device, scheme, or artifice to defraud;
- (2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) Engage in any act, practice, or course of business which operates or would operate as fraud or deceit upon any person.

...

(d) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

6. Tenn. Code Ann. § 48-1-124 states, in pertinent part:
 - (b) For purpose of this section, a purchase or sale is made in this state, whether or not either party is then present in this state, when:
 - (1) An offer that results in a sale originates from this state;
 - (2) An offer to purchase or sell a security is accepted in this state; or
 - (3) An offer that results in a sale is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

ANALYSIS AND CONCLUSIONS OF LAW

1. The Respondent conducted securities related business, was not registered with a firm, and solicited and advised client in the purchase of securities. The Respondent is not registered as a broker-dealer, agent, investment adviser, or investment adviser representative in the State of Tennessee. This constitutes violations of Tenn. Code Ann. § 48-1-109.
2. The Respondent sold unregistered securities in the form of investment contracts in the State of Tennessee. This constitutes violations of Tenn. Code Ann. § 48-1-104.
3. The Respondent committed fraud and deceit when he held himself out as investment professional and submitted monthly reports of Mr. Smith's earnings but never gave Mr. Smith any money from his investment. These actions constitute violations of Tenn. Code Ann. § 48-1-121.
4. Pursuant to Tenn. Code Ann. § 48-1-115(a), the responsibility for the administration of the Act is vested in the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility pursuant to Tenn. Code Ann. § 48-1-115(b).

5. The Division has met its burden of proof by a preponderance of the evidence that Respondents violated Tenn. Code Ann. § 48-1-104 by entering into the investment contracts and failing to register them properly.
6. The Division has met its burden of proof by a preponderance of the evidence that Respondent James Hardin was not registered as an agent or an investment adviser representative when the contracts were offered and sold in violation of Tenn. Code Ann. § 48-1-109.
7. The Division has met its burden of proof by a preponderance of the evidence that Respondent Hardin Enterprises, Inc. was not registered as a broker-dealer or an investment adviser when the contracts were offered and sold in violation of Tenn. Code Ann. § 48-1-109.
8. The Division has met its burden of proof by a preponderance of the evidence that Respondents employed a device, scheme, or artifice to defraud investors in violation of Tenn. Code Ann. § 48-1-121(a)(1). The complainant never received any return on his investment contracts either in interest or principal.
9. The Division has met its burden of proof by a preponderance of the evidence that Respondent made untrue statements of material facts regarding being a licensed business in Tennessee and about the purchase and selling of homes for investment in violation of Tenn. Code Ann. § 48-1-121(a)(2).
10. The Division has met its burden of proof by a preponderance of the evidence that Respondents engaged in acts, practices, and a course of business which operated as a fraud or deceit upon investors by using the investment contracts as tools for their own monetary gain in violation of Tenn. Code Ann. § 48-1-121(a)(3).

In determining the amount of the civil penalty assessed against Respondent, Respondent failed to acknowledge any wrongful actions. Respondent has shown a pattern of unlicensed activity. Respondent continues to hold himself out as a person or entity licensed to conduct investing. There is no evidence that Respondent will not engage in the same or similar conduct in the future. As such, the maximum civil penalty must be imposed in order to ensure Respondents receive a substantial economic deterrent for the violations. Petitioner has not filed an itemized bill of assessed costs.

JUDGMENT

Considering all relevant factors, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. It is **ORDERED** that Respondent, Roger James Flambo is **ASSESSED** one civil penalty of \$10,000 dollars for violation of Tenn. Code Ann. § 48-1-104.
2. It is **ORDERED** that Respondent, Roger James Flambo is **ASSESSED** one civil penalty of \$10,000 dollars for violation of Tenn. Code Ann. § 48-1-109.
3. It is **ORDERED** that Respondent, Roger James Flambo is **ASSESSED** one civil penalty of \$10,000 for violation of Tenn. Code Ann. § 48-1-121(a)(1).
4. It is **ORDERED** that Respondent, Roger James Flambo is **ASSESSED** costs of up to but not to exceed \$5,000. Payment of these civil penalties and costs are to be paid within thirty days after the entry of the Initial Order and the filing of the Final Bill of Costs by the Division with the Administrative Procedures Division.

This Initial Order imposing civil penalties and sanctions against Respondents is entered to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by the policy and provisions of the Law.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **30th day of August, 2022**.

A handwritten signature in blue ink, appearing to read "Richard M. Murrell", written over a horizontal line.

RICHARD M. MURRELL
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the
30th day of August, 2022.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE (COMMISSIONER)**, called an Initial Order, was entered on **August 30, 2022**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **September 14, 2022**. A new 15 day period for the filing of an appeal to the **COMMISSIONER** (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an Appeal, which must be **received** by APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **COMMISSIONER** by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the **COMMISSIONER**, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **September 14, 2022**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The COMMISSIONER decides to Review the Initial Order:** In addition, the **COMMISSIONER** may give written notice of the intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **COMMISSIONER** renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **September 6, 2022**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
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